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COMPLIANCE RULING

In the matter of the Department of Juvenile Justice
Ruling Numbers 2020-4962, 2020-4963
August 14, 2019

The Department of Juvenile Justice (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ in relation to the grievant’s two November 14, 2018 grievances. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievances.

FACTS

On or about November 14, 2018, the grievant initiated two separate grievances with the agency. The first step responses to both grievances were completed by the first step-respondent and returned to the agency’s human resources office at the grievant’s facility on December 7, to be hand-delivered to the grievant. The agency states that the grievant was contacted on December 7 and December 20 to advise him that the first step responses were ready to be picked up from the human resources office.² It appears the grievant never responded to the agency’s messages or picked up the first step responses at that time.

Having received no further response from the grievant, the agency states that it sent, via U.S. Mail, a copy of the grievances (including the first step responses) and a notice of noncompliance to him on or about April 11.³ In its notice of noncompliance, the agency requested a response from the grievant within five workdays of his receipt of the notice. Since more than five workdays have elapsed since the agency notified the grievant of his alleged noncompliance and the grievant has not yet advanced or concluded his grievances, the agency seeks a compliance ruling allowing it to administratively close the grievances.

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² The agency states that the grievant received an email and a voicemail message on December 7, and a second voicemail message on December 20.

³ The mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988).

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.⁴ That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.⁵ If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.⁶

In this case, the agency's request for a compliance ruling appears to be premature, as there is no indication that the grievant received the first step responses before the notice of noncompliance (with copies of the grievances) were mailed to him on or about April 11, 2019. The grievant should have received the responses first, then been given five workdays to advance or conclude the grievances before the agency sent him a notice of noncompliance. Ordinarily, this is a situation in which EDR would direct the agency to give proper written notice of the alleged noncompliance to the grievant and allow the grievant five workdays to correct any noncompliance before seeking a compliance ruling. Based on a review of the information submitted by the parties, however, it is evident that the grievant has not contacted the agency or taken any action to proceed with his grievances for an extended period of time. Moreover, an additional four months have passed since the agency mailed him its notice of noncompliance with copies of the grievances, and the grievant has not responded to the agency.

Accordingly, and in the interest of expeditiously resolving the issues raised in the grievances, the grievant is ordered to contact his human resources office and indicate whether he wishes to conclude either or both of the two grievances or proceed to the next step for either or both of the two grievances **within ten workdays of the date of this ruling.**⁷ If he does not, the agency may administratively close the grievances without any further action on its part. The grievances may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

⁴ *Grievance Procedure Manual* § 6.3.

⁵ *See id.*

⁶ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁷ *See Grievance Procedure Manual* § 3.1.

EDR's rulings on matters of compliance are final and nonappealable.⁸



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⁸ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).